

MISC.CIVIL APPLICATION NO. 666 OF 1995.

Date of decision: 22.11.1995.

For approval and signature

The Honourable Mr. Justice S.M. Soni

and

The Honourable Mr. Justice R.R.Jain

Mr. P.S. Champenari, A.G.P. for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram:S.M.Soni & R.R.Jain, JJ.

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November 22, 1995.

Oral judgment (Per Soni, J.)

Show cause notice came to be issued to respondent No.2 as to why contempt proceedings should not be taken against him as he did not remain present on 1.5.1995 with a view to threshout the entire matter at the time of preliminary hearing. On the returnable date of the notice of the main petition, time was sought on behalf of the respondents for want of instructions. The matter was adjourned time and again and notice came to be issued on 23.6.1995 to respondent No.2 to remain personally present

before the court on 29.6.1995, the returnable date. It was informed to the court that the notice is served. However, respondent No.2 had not remained present. In the said situation, notice came to be issued under the Contempt of Courts Act, making it returnable on 17.7.1995.

Learned A.G.P. Mr. P.S.Champenari has filed affidavit in reply of respondent No.2 Mr. V.Y.Vyasa, the Chief Executive Authority, Baroda Urban Development Authority. We would like to reproduce para 2 of the said affidavit which reads as under:

"2. I say that I have very high regard for the orders of the Hon'ble court and I have never flouted any order or direction issued by the Hon'ble Court. I say that since I am Chief Executive Authority attached to VUDA, my regular posting I used to attend my office and in case of any necessity, since I am also holding additional charge as Competent Authority and Additional Collector (ULC) Baroda, office of the competent authority used to place necessary and requisite papers before me. At this stage I would like to point out that so far as the order passed by this Hon'ble Court dated 23rd June, 1995 was received by the office of the Competent Authority and Additional Collector (ULC) on 27th June, 1995. However, since I am regular incumbent as Chief Executive Authority, VUDA and since I am holding additional charge as Competent Authority and Additional Collector (ULC), because of heavy workload and due to bonafide mistake on my part I could not remain present before this Hon'ble Court and for not remaining present I sincerely regret for the same. But, however, at this stage I would like to point out to the Hon'ble Court that since all the proceedings were concluded at the end of Competent Authority and Additional Collector, papers were sent to Government of Gujarat for reviewing thee proceedings u/s 34 and as such on 29th June, 1995 in the early morning Subordinate officer had already proceeded to collect papers from Gandhinagar and then to reach High Court. I say that Subordinate officer could not collect papers from the Government and without papers he came to the High Court and met the Assistant government Pleader at about 3.30 P.M.. He was informed that order has already been passed. I say that on account of my bonafide mistake and since I am holding additional charge of Competent Authority and Additional Collector (ULC) Baroda, because of other pressure and on account of regular workload it went out of my notice and as a result of which I could not remain present before the Hon'ble Court. Otherwise I

had no intention to flout the order of this Hon'ble Court and I had no intention to not remain present before this Hon'ble Court on 29th June, 1995. I sincerely from my innersoul regret for the same. I assure that the anxiety shown by this Hon'ble Court and observations made by this Hon'ble Court by issuing notice will not be repeated in future by me."

In our opinion, the statements made in this paragraph show and suggest that his absence at the relevant time was neither intentional nor wilful nor deliberate. Despite this he has regretted for the absence unconditionally. He has apologised for the same. From the statements in para 2 of the affidavit it is clear that he remained absent at the relevant time for the reasons beyond his control.

We, therefore, accept the explanation and apology tendered by respondent No.2 and proposes to drop the proceedings.

Proceedings are, therefore, dropped. Rule discharged. No costs.